



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240



AUG 7 1991

Mr. Jeff Zelikson
Director, Hazardous Waste
Management Division
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, California 94105

Dear Mr. Zelikson:

Thank you for your letter of July 15, 1991, concerning the uranium mines located near Bluewater, New Mexico. This letter is to inform you of actions which the Department of the Interior (DOI) can take at the uranium mines located on Navajo allotted lands near Bluewater, New Mexico.

As you are aware, the uranium mines located near Bluewater, New Mexico, consist of the Brown-Vandever-Nanabah mines and the Navajo-Desiderio mine. These mines are located on lands owned by Navajo allottees and held in trust by the Department's Bureau of Indian Affairs (BIA).

The DOI, through BIA, is willing to expeditiously initiate cleanup activities at this site including posting signs, fencing, filling adits and vent holes, grading, and covering open pits. The BIA would commence cleanup operations during the month of August, 1991. These actions would be taken because of BIA's interest in eliminating safety concerns (viz., open mine shafts and pits) for Navajo families living near the two mine areas. The BIA would exercise this authority under 25 U.S.C. Section 2, the Snyder Act (25 U.S.C. Section 13), and relevant regulations.

Thus, implementation of any actions by the BIA will not be made pursuant to any statutory requirements under the Comprehensive Environmental, Response, Compensation and Liability Act (CERCLA). The DOI is not an "owner" or "operator" as defined by CERCLA with respect to discharges, etc., on trust lands under leases approved by the Secretary [see U.S. v. Algoma Lumber Co., 305 U.S. 415 (1939)]. This is consistent with the position taken by the United States in U.S. v. Southern Mountain Farms (D.Az.), and U.S. v. Stanford (D.Az.).

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The DOI has received indications from the Environmental Protection Agency (EPA) that EPA may choose to pursue response activities on the site under CERCLA despite BIA's decision to conduct timely actions under the Snyder Act. If EPA prefers to pursue such activity under CERCLA, rather than have BIA perform such activities under the Snyder Act, it should expect no cost recovery from DOI.

The DOI welcomes the opportunity to work with the EPA in the clean up effort in rectifying these concerns under the Snyder Act. If you have any questions, please contact Mary Josie Smith, Chief, Division of Hazardous Materials Management, Office of Environmental Affairs, on (202) 208-7877 or George Farris, Bureau of Indian Affairs, on (202) 208-5831.

Sincerely,



ED CASSIDY
Deputy Assistant Secretary -
Policy, Management and Budget